

In the United States Bankruptcy Court

for the

Southern District of Georgia

Savannah Division

FILED

at 12 O'clock & 04 min. PM

Date 4/22/97

MARY C. BECTON, CLERK
United States Bankruptcy Court
Savannah, Georgia *JB*

In the matter of:

LARRY ALLEN DENNIS

Debtor

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Chapter 7 Case

Number 93-40713

ORDER ON MOTION TO RECONSIDER
THE CLAIM OF E. S. ROBBINS, INC.

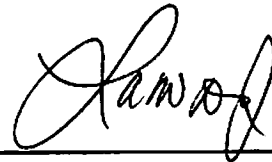
Debtor asks this Court to reconsider its Order on Debtor's Objection to the Claim of E. S. Robbins, Inc. The Court's Order in question was filed on January 23, 1996. In that Order I concluded that the Debtor's Objection to the claim of E. S. Robbins was denied on two grounds. First, the judgment rendered by the Circuit Court of Madison County, Alabama, precluded any attack on the amount of the Robbins claim in this case and second, because of "the testimony and documentation presented at the hearing before me" I found that Robbins had independently established a factual basis for the allowance of its claim in the amount of \$92,579.60 as of April 23, 1993, plus per diem interest thereafter of \$28.31. Debtor never appealed this Court's Order allowing the Robbins claim in the amount as filed. Instead, on March 24, 1997, Debtor asked for reconsideration under Bankruptcy Rule 9024 which incorporates Rule 60 of the Federal

Rules of Civil Procedure. Debtor states two grounds for seeking reconsideration: first, that the Alabama State Court lacked jurisdiction; and second, that E. S. Robbins used fraud in procuring the judgment. Assuming *arguendo* that the Debtor is free to attack the *in personam* jurisdiction of the Circuit Court of Madison County, Alabama, in this Court, I find that the post-judgment proceedings in that Court are *res judicata* and cannot be collaterally attacked in this Court. Specifically, on August 19, 1991, the Circuit Court of Madison County, Alabama, entered "final judgment against Larry Dennis" in favor of E.S. Robbins Corporation in the amount of \$76,987.96. On December 10, 1994, Debtor, through counsel, filed a Motion to Vacate that judgment as void, alleging that the named Defendant was Larry Dennis II, a minor child, that neither Defendant nor a guardian were served with a copy of the summons and complaint, that Larry Dennis, II, had never done business as Larry Dennis Fencing and was not the proper party to the action, and on other grounds. By Order dated February 27, 1995, the Honorable Daniel B. Banks, Jr., Circuit Judge, denied Debtor's Motion. On March 16, 1995, Debtor, through counsel, filed a Motion to Reconsider, and on April 7, 1995, the Honorable Daniel B. Banks, Jr., Circuit Judge of Madison County, Alabama, denied the Motion to Reconsider.

The pleadings filed in Alabama clearly raised the same issues as to

whether there was a misnomer in the naming of Larry Dennis II, a/k/a Larry Dennis, in the original Alabama proceeding and whether there was proper service upon the Debtor in that proceeding. Both issues were decided adversely to the Debtor. That judgment is *res judicata*, is entitled to full faith and credit, and will not be disturbed by this Court.

Debtor also alleges that the Robbins' judgment was obtained by fraud. However, that allegation is not timely under Bankruptcy Rule 7060(b) which requires motions seeking relief from judgment on the grounds of fraud to be made "within a reasonable time and . . . not more than one year after the judgment, order or proceeding was entered or taken." Fed.R.Bankr.P. 9024. The Alabama judgment of August 19, 1991 and this Court's Order of January 23, 1996, were both entered more than one year prior to Debtor's motion which was filed on March 24, 1997. Accordingly, Debtor's Motion to reconsider the claim of E. S. Robbins, Inc., is denied.



Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 21st day of April, 1997.